

**COX, WOOTTON, GRIFFIN,
HANSEN & POULOS LLP**
Gregory W. Poulos (SBN 131428)
Max L. Kelley (SBN 205943)
190 The Embarcadero
San Francisco, CA 94105
Telephone No.: 415-438-4600
Facsimile No.: 415-438-4601

LAW OFFICES OF RICHARD P. WAGNER

Richard P. Wagner (SBN 166792)
700 Oceangate, Suite 700
Long Beach, CA 90802
Telephone: (562) 216-2946
Facsimile: (562) 216-2960

Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEL MAR SEAFOODS, INC.) Case No.: CV 07-02952 WHA

Plaintiff,) **MOTION FOR CLARIFICATION OF**
) **ORDER RE MOTION FOR**
) **ATTORNEY'S FEES AND COSTS**

BARRY COHEN, CHRIS COHEN (aka CHRISTENE COHEN), *in personam* and F/V POINT LOMA, Official Number 515298, a 1968 steel-hulled, 126-gross ton, 70.8- foot long fishing vessel, her engines, tackle, furniture, apparel, etc., *in rem*, and Does 1-10,

Defendants.

And Related Counterclaims

Plaintiff DEL MAR SEAFOODS, INC. (“Del Mar”) requests that the district court clarify its “Order Re Motion For Attorneys’ Fees and Costs” to specify whether the order extends the time to appeal under Rule 58.

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GRIFFIN, HANSEN
& POULOS LLP

190 THE EMBARCADERO
SAN FRANCISCO, CA
94105
TEL 415-438-4600
FAX 415-438-4601

DelMarSeafood2504

I. Legal Issue and Discussion:

The Court entered Judgment in this matter on July 3, 2008. Under Rule 4 of the Federal Rules of Appellate Procedure, the time for filing a notice of appeal is thirty days from the entry of judgment. The time for filing the notice is extended by the filing of a motion for attorneys fees only "if the district court extends the time to appeal under Rule 58." F.R.A.P. 4(a)(4)(A)(iii).

Neither the present Judgment nor the Order Re Motion For Attorney's Fees and Costs specifies whether the motion for attorneys fees extends the time to appeal under Rule 58. The district court's Judgment does state that the district court "shall retain jurisdiction in this matter until final determination of the amount owed by Plaintiff for attorney's fees and costs." This suggests to plaintiff that the Court may have intended to extend the time for appeal so that the court could rule on the attorney's fees motion, but it would be helpful to the parties for the issue to be clarified.

II. Conclusion;

For the avoidance of doubt and so that the parties may fully know their rights and duties with respect to the Judgment, Plaintiff respectfully requests that the court clarify whether its order with respect to attorney's fees and costs extends the time to appeal under Rule 58.

Dated: July 28, 2008

COX, WOOTTON, GRIFFIN,
HANSEN & POULOS, LLP
Attorneys for Plaintiff
DEL MAR SEAFOODS, INC.

By: _____ /s/
Gregory W. Poulos

COX, WOOTTON,
GRIFFIN, HANSEN
& POULOS LLP

196 THE EMBARCADERO
SAN FRANCISCO, CA
94105
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FAX 415-438-4601